FOIPOP Advisory Committee Report

N.S. Government Response

Summary

May 10, 2004

Recommendation of Advisory Committee	Accept in full	Accept in Part	Already Implemented	Not Accept: Further Review Required	Reject
1. Fees	√				
2. Repetitious or incomprehensible applications	√				
3. Review Office flexibility re extensions					√
4. Review Office support for mediation					√
5. Review Office Oath of Confidentiality	√				
6. Review Office legislative prohibition re disclosure	√				
7. Review Officer provide full reasons					√
8. Review Officer power to conduct audit where not all responsive records provided					√
9. Mandatory 3rd party notice if interests affected				√	
10. Third party failure to respond to notice taken as consent					√
11. Review Officer public education role	√				
12. Review Officer authority to establish procedures	√				
13. Review Officer recommendation authority	√				
14. Continuing education for FOIPOP Administrators			√		

Recommendation of Advisory Committee	Accept in full	Accept in Part	Already Implemented	Not Accept: Further Review Required	Reject
15. Government Incorporate best practices			√		
16. Neither confirm nor deny for safety and privacy reasons	√				
17. Ability to create a record in an alternative format	√				
18. Extensions for further consultation with other levels of government	√				
19. Extensions for multiple concurrent requests	√				
20. Transfers between public bodies and municipalities	√				
21. Privacy Review Committee					√
22. Independent arbitrator for privacy complaints outside scope of FOIPOP Act					√
23. Mandatory 3rd party notice procedure in accordance with S. 14 of regulations					√
24. Eligibility for employment information exemption	√				
25. Protection of rights of survivors of deceased persons	√				

Recommendation of Advisory Committee	Accept in full	Accept in Part	Already Implemented	Not Accept: Further Review Required	Reject
26. Next of kin equivalent rights as deceased	√				
27. Provision to protect rights of minor child				√	
28. Guardians and parents be provided with rights of minors				√	
29. Personal info to include fax number, e-mail address, and hard drives		√			
30. Revise intergovernmental exemption to "would reveal"					√
31. Exclude right of correction of professional opinions	√				
32. Include "reappointment" of faculty member on university employment decision process exemption	√				
33. "Tenure" be defined to include appointments of an indefiinite term on university employment decision process exemption	√				
34. Permit universities to share personal info on shared programs on the same basis as government	√				
35. Government complete work on routine access			√		

Recommendation of Advisory Committee	Accept in full	Accept in Part	Already Implemented	Not Accept: Further Review Required	Reject
36. Routine access list be reviewed and updated on a regular basis			√		
37. ABC's adopt routine access policy			√		
38. All ABC's of the Government fall under scope of the Act					√
39. Definition of public bodies include municipalities for SS. 9,10, and 27 of the Act	√				
40. Minister of Justice be required to produce annual report on the Act	√				
41. Require applicant to be notified in writing on transfers		√			
42. Ensure that name, address, & phone number presumption of unreasonable invasion of privacy not dependent on use for mailing lists or solicitation	√				
43. Add use to offence for malicious collection and disclosure of personal information	√				
44. Response time for correction of personal info requests to be equivalent of access response times	√				

Recommendation of Advisory Committee	Accept in full	Accept in Part	Already Implemented	Not Accept: Further Review Required	Reject
45. Restrict period for requesting a review to 90 days	√				
46. Add exclusion of records relating to a prosecution once it is concluded if disclosure rules would have not have required during the prosecution				√	
47. Undertake review of FOIPOP Act within five years of receipt of Advisory Committee Report by Governor in Council	√				

FOIPOP Advisory Committee Report : GOVERNMENT RESPONSE

N.S. Minister of Justice

1. Introduction

An Advisory Committee was struck by the Minister of Justice in late 2002 to begin a comprehensive review of the *Freedom of Information and Protection of Privacy Act* and to recommend any amendments to the *Act* to the Governor in Council. The Committee consisted of Peter O'Brien, Regional Director of the Canadian Federation of Independent Business (now retired), journalist and consultant Jim Meek, journalist Keith Corcoran, and public servants Bill Wilson of the Department of Justice and Susan Potts of the Public Prosecution Service. The Committee received 21 submissions from various parties and conducted three days of public hearings. It issued its report on October 24, 2003 and made 47 recommendations for change to the administration and/or legislative provisions of the *Act*.

2. Summary of the Advisory Committee's Work

There were a limited number of written submissions and public presentations with recommendations for change to the *FOIPOP Act* to the Advisory Committee. However, key stakeholders such as the Review Officer, caucus offices, journalists, hospitals, universities, and the N.S. Government provided thoughtful submissions and substantive recommendations for change based on their own experience with the legislation. Many, if not most of the submissions, focused on the issue of fees charged for the processing of applications and requests for review. Other areas of focus included the administrative frustrations of both applicants and public bodies, and methods of ensuring that privacy issues were adequately addressed in the *Act*. The remaining issues brought to the Committee ranged from administration and interpretation of the provisions of the *FOIPOP Act* (e.g., third party notice, rights of deceased and minors, status of municipal governments) to the authority and status of the Review Officer. The Committee's analysis of these issues and its recommendations concerning them were thoughtful and in general produced constructive suggestions for change to the legislation and its administration.

3. Response to the Recommendations of the Advisory Committee

A. General

The Committee is to be commended for its work in analyzing the need for improvements to the current *FOIPOP Act*, and in balancing the needs for effective administration of the *Act* with the interests of those who made submissions to the Committee. The report is a thoughtful, succinct, and comprehensive review of the legislation.

In general the N.S. Government supports the thrust of the Committee's recommendations to: deal with fees and multiple requests; provide identified records in a more readily accessible manner; support continuing education efforts and accountability; define more specifically the role of the Review Office; and clarify the application of the *Act* to other levels of government, minors, and deceased individuals. The government appreciates the complexities involving personal privacy issues confronted by the Committee, and respects its deferral of many of those issues to further review. However, the government believes that it is necessary that a number of

these issues be reviewed now to ensure the privacy rights of individuals are more fully protected in the legislation.

The government accepts and will implement the vast majority of the recommendations made by the committee. In fact five of these recommendations in the area of continuing education and providing records on a routinely accessible basis were already implemented to a large degree by the time the committee issued its report. In addition, the government accepts an additional 27 recommendations for adoption in whole or in part. Five will be the subject of further review, and only ten recommendations are rejected because: we believe the current legislation already accommodates any concerns raised by the Committee; there are better alternatives; or, the rationale for the proposal is unclear.

More specifically, the government endorses most of the Committee's recommendations for change, including:

- Providing means to prohibit frequent FOIPOP applications with no apparent purpose from individuals over long periods of time;

- Clarifying the authority and obligations of the Review Office;

- Providing more protection for families of deceased persons and minors;

- Endorsing the need for recognition of the work of FOIPOP Administrators, and increased continuing education opportunities for them;

- Ensuring government accountability through annual reporting and further review of the legislation;

- Making the necessary housekeeping changes to the legislation to allow for more efficient administration and consistent interpretation.

Implementation of all 27 accepted recommendations will require amendments to the *FOIPOP Act* and/or regulations made under the *Act*.

The responses to each recommendation follow with a summary matrix of all responses attached as Appendix I.

B. Specific Responses to the FOIPOP Advisory Committee Recommendations

1. The Application Fee remain at $25 but that fees be eliminated for the first two hours of processing time and for any subsequent review by the Review Officer. All other fees are to remain the same.

The recommendation is accepted. The Advisory Committee has struck the right balance between the rights of applicants and the recognition of the costs of processing an application.

2. The *Act* be amended to permit Administrators to decline to process an application they deem to be repetitious or incomprehensible. The Administrator must advise the applicant of the decision, in writing, within 30 days of receipt of the application. The right of the applicant to have the decision reviewed by the Review Officer should remain.

This recommendation for legislative change is accepted as a means of placing reasonable limits on FOIPOP applications by any individual who effectively could be capable of harassing "public bodies" by making continual requests for information about themselves. However, any legislative amendments or proposed regulations will be drafted carefully to ensure that definitions of terms are appropriate. There also will be wording that ensures sufficient safeguards for the rights of applicants with legitimate applications so that their rights are not lessened.

3. The Review Office continue its current practice of flexibility in granting extensions of time for complex and multiple applications.

Section 9 of the *FOIPOP Act* only allows the Review Officer to grant extensions if: the records cannot be identified; a large number of records are requested or must be searched; or, more time is needed to consult with a third party or other public body. "Complex and multiple applications" are not listed under Section 9, and there is no evidence of extensions for them being a "current practice" of the Review Office. As the basis and the intent of the recommendation is unclear, **this recommendation, in its present form, is rejected. (However, please see the response to Recommendation # 19)**

4. The Review Office be provided with sufficient support to freely offer mediation.

This recommendation is rejected as unnecessary. The Review Office currently has a mediation officer as part of its staff, and the government believes that this more than adequately meets the need.

5. All staff of the Review Office be administered an oath of confidentiality.

Records in the Review Office are excluded from the *Act*, and thus the prohibitions against disclosure of personal information in the *Act* do not apply. As well, there are no legislated confidentiality provisions dealing with other sensitive information. The Review Office maintains confidentiality with respect to these types of records now, but there is no formal oath administered. **This administrative recommendation is accepted,** and it will be included in any legislative proposals adopted in response to Recommendation #6.

6. **A Section be added to the *Act* to prohibit the Review Officer and staff from disclosing any information that comes to their knowledge in the performance of their duties.**

This recommendation is made in conjunction with Recommendation #5 and would codify as a requirement the confidentiality presently observed by the Review Office and its staff, as well as make N.S. more consistent with other jurisdictions. However, there must be some stated exceptions (as in other jurisdictions) to the requirement (e.g., disclosure related to the occurrence of an offence). **Subject to that qualification, this recommendation for legislation change is accepted.**

7. **The Review Officer provide in each review full reasons for the decision.**

Section 39 of the *FOIPOP Act* requires the Review Officer to give reasons for his decision. **This recommendation is unnecessary and it is therefore rejected** as the current provision is adequate.

8. **The Review Officer be given the power, where there are reasonable grounds to believe a public body has not provided the Review Office with all responsive records, to investigate and audit the public body.**

Section 38 of the *Act* provides the Review Officer with the authority to seek a court order if records are not provided within a certain time period, and Section 22 of the regulations specifies that this must be done within 15 days. The government believes these provisions are adequate for obtaining all responsive records to an application, and **therefore rejects the recommendation.**

9. **Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to clarify the notice provision. The amendment would provide that notice to a third party is mandatory if the records relevant to a FOIPOP application might affect the interests or invade the privacy of that third party except in cases where giving such notice would be impracticable**.

Further review of this recommendation is needed to ensure that third party notice requirements neither unnecessarily increase the administrative burden of processing an application, nor unfairly extend the time of responding to applicants. The issue relates

more to the third party notice rights of businesses rather than the privacy rights of individuals whose interests are adequately served by existing provisions in the *Act*. The goal will be to ensure that the legitimate rights of businesses to make representations concerning confidential information supplied to government are ensured in all circumstances.

10. Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add that failure of a third party to respond to a request for consent to release records be deemed a refusal to consent to the release of the records.

The *Act* currently provides a third party with an opportunity to make representations regarding disclosure where the public body has reason to believe it must not disclose a record. Failure to respond to a formal third party notice requesting those representations is, in our view, neither determinative of a third party's objection to, nor its consent for, disclosure of records. **This recommendation is therefore rejected.**

11. The Review Officer's mandate should include participation in public education to facilitate improved use of the legislation.

Government believes that public education efforts with respect to the *Act* should be encouraged. However, it believes that legislated provisions are not necessary to achieve this goal, and **this recommendation is thus rejected.**

12. The *Act* specify the authority of the Review Officer to establish procedures regarding the review process and to provide such procedures to applicants, Administrators and third parties.

This is already being done by the Review Officer. Placing it in legislation only serves to provide more legislated definition to the role and responsibilities of the Review Office. However, it should be noted that clause 49(1)(i) of the *Act* now provides the Minister of Justice with the authority to make regulations "prescribing the form and manner of review" and any amendments should not conflict with that provision. **This recommendation for legislative change is accepted with the qualification that any amendments will not conflict with clause 49(1)(i) of the *Act*.**

13. Section 39 of the *Act* be amended to specify the authority of the Review Officer to make recommendations on whether claims for exemption have been met, discretion was appropriately exercised (e.g., disclosure or fee waiver decision) or other related matters.

This recommendation would provide specific legislative authority for the Review Officer on the issues to be adjudicated in his Report and Recommendations. In particular it would recognize the authority of the Review Officer to make recommendations on whether a public body has exercised its discretion appropriately in claiming an

exemption. However, government suggests that the criteria for the Review Officer's review of the exercise of this discretion by a public body be made in accordance with administrative law principles. **Thus, this recommendation for legislative amendment is accepted, and that such review of the exercise of discretion be in accordance with the principles of administrative law.**

14. **Continuing education and upgrading be provided to all FOIPOP Administrators on a regular basis, utilizing conferences and educational programs across the country.**

Periodic training and education are currently being provided through the Office of the FOIPOP Coordinator. However, it is recognized that for various reasons participation at conferences and in educational programs has been limited, and more is needed. Thus, **this recommendation is accepted**, and the government will ensure that support is provided to attend conferences and educational programs.

15. **The government should attempt to incorporate best practices from other jurisdictions in its own educational programs.**

Government agrees with this recommendation, and advises that it is already being done. Experience in best practices is provided through training experiences and through advice provided to administrators by the Coordinator, as well as the sharing of experiences among FOIPOP Administrators.

16. **Section 7(2)(c) be amended to include Sections 18 and 20. This would broaden the ability of a public body, when responding to an applicant, to neither confirm nor deny the existence of a record if issues of personal privacy or safety are involved.**

This recommendation is accepted and government notes that appropriate wording in any implementing amendment will ensure that its use is limited to circumstances where disclosure would harm a third party.

17. **A provision be added to the *Act* to give FOIPOP Administrators the ability to create a record in a format requested by the applicant if it would be reasonable to do so.**

This recommendation for legislative change is accepted. However, "reasonable" will be defined by regulation in terms of ease of preparation and cost, among other factors.

18. **Section 9(1)(c) be amended to allow an extension for further consultation with another level of government listed in Section 12.**

The *Act* now only allows for extensions for consultations with other public bodies and third parties. **This recommendation for legislative change is accepted** as it would acknowledge that consultations with other levels of government may take considerable time.

19. **Section 9(1)(c) be amended to allow for time extensions to be granted in situations of multiple concurrent requests from a single source, on condition that the extension is first authorized by the Review Office.**

This recommendation for legislative amendment is accepted. It will allow more flexibility in the processing time on several applications all received from the same applicant. The government also believes that such extensions should also be granted where there are multiple applications by various applicants on the same issue, and will add this additional legislative provision.

20. **Section 10 be amended to allow for transfers of FOIPOP requests between public bodies and municipalities.**

Currently applications involving information created by a municipality but in the possession of a public body may not be transferred for processing to the municipality. Under the *FOIPOP Act*, transfers under Section 10 may only be made between public bodies. The definition of a public body does not include municipalities which are subject to the FOIPOP provisions of the *Municipal Government Act*. Municipalities in turn cannot transfer applications to public bodies under the *FOIPOP Act* for the same reasons. **This recommendation is accepted** for the reasons noted, with the additional proviso that municipalities have the same transfer capability in Part XX of the *Municipal Government Act*. **(Please see also the response to Recommendation # 39)**

21. **The Government of Nova Scotia consider establishing a Committee to specifically review pertinent aspects of personal and business privacy once the federal legislation is implemented and provincial issues become more obvious.**

The issues of personal privacy under both the *FOIPOP Act* and the Federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) are complex, and few submissions were made to the Advisory Committee on personal privacy. However, the impact of PIPEDA on the Nova Scotia government and its agencies, boards, and commissions is already being reviewed internally. With the exception of specific issues related to the health sector and now being reviewed by the N.S. Department of Health, Government believes that no further work is needed with respect to PIPEDA. **This recommendation is therefore rejected.**

22. **The Government consider appointing a separate, independent arbitrator with authority to investigate privacy complaints outside the scope of the *FOIPOP Act*.**

This recommendation appears to assume that there is a need for the government to appoint an independent arbitrator to respond to privacy complaints under the *Federal Personal Information Protection and Electronic Documents Act*. As of January 1, 2004, this legislation applies to all collection, use, and disclosure of personal information by an organization during the course of commercial activity, and privacy complaints under the

legislation are under the jurisdiction of the Privacy Commissioner of Canada. There is thus no need for an independent investigator of privacy complaints outside the scope of the *FOIPOP Act*, and **this recommendation is therefore rejected.**

The government acknowledges, however, that currently there is no specific remedy or authority to deal with complaints with respect to violations of individuals' personal privacy within the *FOIPOP Act*. Complaints are dealt with informally by the government and the Review Officer. Recommendations were made in submissions to the Advisory Committee on this issue, but there were no representations by the general public to the committee as to an urgent need to address it. Thus, it is the government's view that consideration of this issue should be deferred to a later date, if and when an urgent need to address this issue is identified by Nova Scotians.

23. Section 22(1A)(b) of the *Act* be amended to require notice be given to a third party corporation in the Province in the manner set out in Section 14 of the regulations.

This recommendation is a companion to Recommendation # 9 which proposed that all third parties under Sections 20 and 21 whose interests are affected by an application should be given formal third party notice under Section 22. **Further review is needed** to determine if implementation of this recommendation will be necessary.

24. A provision be added to the *Act* that exempts information used to determine eligibility for employment or promotion, provided a summary of the performance of an individual as a candidate is given to that individual if requested.

Currently Section 19C of the *FOIPOP Act* provides confidentiality for information compiled for academic appointments in a university, but no similar provision exists for other public bodies. This recommendation will allow for more confidentiality relating to information obtained during the employment process for all public bodies. **This recommendation is accepted.**

25. Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add a section to protect the rights of the survivors of a deceased person.

There are difficulties with respect to the issue of privacy rights of deceased individuals and clarifications would be helpful. The Committee's response was to allow the next of kin to have the same rights as the deceased (if the deceased were still alive) for purposes of notification under Section 22 of the *Act*. However, the views of the next of kin are not always representative of all family members in such situations, and in many cases the legal representative of the deceased should represent those views. Thus, **this recommendation is accepted with the proviso** that amendments will reflect the need to have the rights of the legal representative, the next of kin, and all family members clearly defined. The "next of kin" will be defined in regulations if there is not already an accepted statutory or common law definition.

26. The *Freedom of Information and Protection of Privacy Act* be amended, adding a Section to provide the Executor of the estate - or the next of kin - the same right of access to the deceased's personal records that deceased would have if he were living.

This is a companion to Recommendation #25, and would bestow a deceased's right of access to records on the next of kin. The government agrees that the next of kin should have those rights, and thus **this recommendation for amendment to the *Act* is accepted** with the same proviso with respect to legal representation, next of kin, and family members.

27. Section 22 of the *Freedom of Information and Protection of Privacy Act* be amended to add a section to protect the rights of a minor child.

Further review of this issue is required to determine in what specific circumstances the rights of minors in Section 43 are not now adequately protected or require further clarification.

28. The *Freedom of Information and Protection of Privacy Act* be amended, adding a Section to provide custodial parents or guardians the same right of access to the personal records of a minor child that the child would have at the age of majority.

A further review of this issue is required. If this recommendation were to be implemented, parents would have access to all personal information of any of their children under the age of majority regardless of age, or whether or not disclosure would invade the child's privacy. The government believes that the present provision requiring a judgement regarding privacy issues with respect to parental rights of access is sufficient. Rather, it is the circumstances where such rights could be exercised that needs clarification.

29. The definition of "personal information" in Section 3(1) should be extended to cover an individual's fax number, e-mail address and computer hard drives.

This recommendation for legislation or regulations is accepted in part. Defining personal information to include fax number and e-mail address recognizes and highlights the fact that personal information may exist in electronic media. However, with respect to the part of the recommendation dealing with computer hard drives, the government has assumed that this part of the recommendation is meant to classify as personal information all the electronic records on an individual's computer hard drive, which would not be appropriate. The government considers that a "computer hard drive" is the media that stores information, and is not a particular type of information and thus should not be included in the definition of personal information.

30. Section 12 be revised to reflect that such records should be exempted, if they would

reveal information provided, in confidence, from another government.

This recommendation is rejected because Section 12 has been adequately clarified as a result of the decision in the Chesal Case.

31. **Section 25 (Right of Correction of Personal Information) be amended to specifically exclude the right of correction of personal or professional opinions, but require any contrary opinion to be placed on the file.**

This recommendation is accepted and can be effectively implemented by amending Section 25 to note that "personal information" includes "professional opinions".

32. **Section 19C be amended to include reappointment as a faculty member and appointment or reappointment as an academic administrator of a university.**

This recommendation is accepted. The Act or the Regulations will be amended to include "the appointment or reappointment of a faculty member" in the definition of the term "appointed". S. 19C will include "the appointment or reappointment of an academic administrator", but only when that process is similar to the appointment or reappointment of a faculty member.

33. **The term "tenure" be defined in the *Act* to include appointments of an indefinite term.**

It would appear that granting of appointments of an indefinite term in a university is the equivalent to the granting of tenure. Since the present wording of clause 19C(a)(ii) only includes "tenure", **this recommendation for legislative change is accepted.**

34. **Section 27 be amended by adding a provision which permits universities to disclose personal information where the information is necessary for the operation of shared programs, shared activities or shared resources.**

The submission from the Council of N.S. University Presidents (CONSUP) to the Advisory Committee included this recommendation. CONSUP's submission indicated that it was designed to provide universities with a status equivalent to government public bodies under clause 27(g) of the *Act*. Clause 27(g) allows for disclosure of personal information "to a public body to meet the necessary requirements of government operation". The government believes that universities (and other public bodies that are not the provincial government) should have the same status as government under this provision **and thus recommendation for amendment to the *Act* is accepted**. To provide universities (and other public bodies that are not government, e.g., hospitals and school boards) with the same status as the provincial government, it will be necessary to amend clause 27(g) by substituting "another public body's" for the word "government".

35. The Government complete its work on routine access to records and that routine access be implemented as quickly as possible.

This recommendation had already been implemented by the date the committee issued its report.

36. That the access list be reviewed on a regular basis and updated.

This recommendation is accepted. It has been implemented by policies to ensure that it occurs.

37. Agencies, boards and commissions should adopt the routine access policy described above.

This recommendation is accepted and it has been implemented by the vast majority of agencies, boards, and commissions that are public bodies, and is in the process of being implemented by others.

38. All departments, boards, commissions and agencies of the Government of Nova Scotia should fall within the scope of the *Act*.

This recommendation is rejected as it is deemed unnecessary. All N.S. government departments are under the *FOIPOP Act* now by virtue of the definition in clause 3(1)(j). Agencies, boards, and commissions, all of whose directors are appointed by Order in Council, are under the scope of the *Act* now for the same reason. In addition, the *Act* now includes a "for greater certainty" list of agencies, boards, and commissions under the *Act*. As well, in clause 3(1)(j), provision is made for an organization to be under the scope of the *Act*, if its officers or employees in the course of the performance of their duties are "officers or servants of the crown". The present "for greater certainty" list and the provisions of clause 3(1)(j) are sufficient to define those organizations that are under the scope of the *Act*. As well, the government is in the process of reviewing the "for greater certainty" list to determine its accuracy.

39. The definition of "public body" should be expanded to include municipalities for purposes of Section 9, 10, and 27 of the *Act*.

This recommendation is accepted. The *FOIPOP Act* only allows for application transfers, time extensions for consultations, and exchanges of personal information between and among "public bodies". It does not permit such actions between public bodies and municipalities which are under their own FOIPOP provisions in Part XX of the *Municipal Government Act*. Implementing this recommendation through legislative amendments to both the *FOIPOP* and *Municipal Government Acts* would allow for transfers of applications where either a municipality or a public body has received an application that should have been directed to the other. It would also permit extensions

to the required response time for the purposes of allowing public bodies to consult with municipalities. Finally, it would allow for the transfer of personal information between a public body and a municipality where it is necessary. (See also the response to Recommendation # 20)

40. The *Act* be amended to require the Minister of Justice to provide an annual report on the *Freedom of Information and Protection of Privacy Act*. The report should be released within three months of the calendar year end.

This recommendation is accepted. The legislated requirement for such a report will ensure greater accountability and transparency through the issuance of a public report on the usage of the *Act*. However, as the N.S. Government conducts its business on a fiscal year basis, the report will be for the fiscal year and will be released within three months of the fiscal year-end.

41. Revise Section 9(2) to change "tell" the applicant to "notify the applicant in writing", or in an alternate format for persons with disabilities, where an extension is granted.

This recommendation is accepted in part. However, upon reflection the specific suggestion regarding an "alternate format" if needed, will be done through a general requirement in the *Act* with respect to communicating with the applicant.

42. Revise Section 20(3)(i) to remove ".....and is to be used for mailing lists or solicitation purposes."

This suggestion for legislative change is accepted. The personal privacy issues surrounding the disclosure of an individual's name, address, and phone number go beyond solicitation purposes, and it is important that disclosure of such information be presumed to be an unreasonable invasion of privacy. As well, it is difficult to determine or prove that such information would be used for solicitation purposes, except in cases where mailing lists are requested.

43. Revise Section 47 (1) by adding "uses" to "collects or discloses".

Under the *FOIPOP Act* it is now only an offence to maliciously collect or disclose personal information. The focus should be on inappropriate use and disclosure of personal information, rather than on collection and disclosure. **This recommendation is accepted but the term "collection" will be removed from this offence provision.**

44. Response time for requests to change personal information should be consistent with the access process.

The government accepts this recommendation which is in keeping with the required

30-day response time for access requests. However, it also should be capable of being extended, and amendments to Section 6 will reflect that.

45. The time period during which an applicant may request a review should be limited to 60 days with the possibility of an extension to 90 days with the consent of the Review Officer.

At the present time, an individual may request a review for up to 60 days after the public body has notified the applicant of its decision. However, the *Act* also allows for this period to be extended by the Review Officer for an unlimited period of time. **This recommendation for legislative change is accepted** as there should be limits on the time permitted to launch an appeal.

46. Section 4 of the Freedom *of Information and Protection of Privacy Act* be amended to add that the *Act* does not apply to records relating to a prosecution if all proceedings have been completed if the records sought would not have been the subject to disclosure under the criminal law rules of disclosure during the proceeding.

This is a complex recommendation and the reasons for it being proposed are unclear and without a detailed rationale. **Thus, this recommendation should be further reviewed** to determine whether it is necessary.

47. A review of the *Freedom of Information and Protection of Privacy Act* should be undertaken within five years of receipt of this report by the Governor in Council.

This recommendation is in keeping with the periodic reviews legislated in some other provinces across the country. It would be consistent with the spirit of the original *Act*, and amendments passed by the NS House of Assembly in 1999. Like the report of the Minister on an annual basis, it also ensures accountability through a mandated review of its provisions within a specified time period, and thus **this recommendation for legislative amendment is accepted.**